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July 29, 2004

Clerk of the Court
Michigan Supreme Court

Re: ADM File No. 2002-34

Dear Sir or Madam:

Please accept this letter as our response to the proposed administrative order referenced above.

Recognizing the Michigan Supreme Court's goal of expediting the civil appeals process from orders on motion for summary disposition, our concerns with the proposed changes to the court rules are two-fold.

First, by limiting the page length of briefs, the proposed changes may unduly restrict a party's ability to properly present its position on appeal. Even though the proposed rules require the submission to the Court of Appeals of the party's trial court motion for summary disposition or response, there may be cases raised on appeal that have not been addressed in the lower court and cannot be properly stated within 20 pages. Further, in light of MCR 7.214(E), which allows for a decision to be rendered without oral argument having been heard in the matter, a party may not have an opportunity to fully present its case before the Court of Appeals, if its brief has been restricted in length, and no oral argument heard.

Lastly, the proposed changes appear to place restrictions on an appellee, without placing the same restrictions on the appellant. Specifically, allowing the appellant to waive the filing of a transcript may shift the cost burden from an appellant to an appellee in situations where the appellant seeks to present issues before the Court of Appeals that were argued before the trial judge. By way of example, in appealing the denial of a motion for reconsideration, without requiring the appellant to file the transcript, it may be argued that testimony/evidence was not addressed by the trial court. In that instance, an appellee is forced to obtain the transcript to show that the testimony/evidence was presented to the trial judge on the record, although it may not have appeared in the briefs filed with the court.

Paragraph 9(B)(4) of the proposed changes provides appellant notice from the Court of Appeals that his brief is past due, and affords him an additional 14-days for filing. No such courtesy is afforded appellee. Additionally, the shortening of the time to file appellee's brief from 35 days to 21 days may be too restrictive, as appellant's brief may not be received by appellant for up to a week after mailing due to delays with the United States Postal Service. This would effectively give appellee only two weeks to prepare a response. Meanwhile, appellant has had the benefit of considerable time to formulate and draft his arguments.

In keeping with the stated goal of shortening the appeal process from orders on motions for summary disposition, it is unlikely that the length of an appellate brief, or allowing an appellee 35 days to respond, would result in an undue delay of the appeal process.

Thank you for your consideration in this regard.

Sincerely,

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